

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

RUSSEL V. WELKER, JR.,	)	
	)	
Claimant,	)	<b>IC 02-012145</b>
	)	
v.	)	<b>ORDER</b>
	)	
IDA-TRAN FREIGHT SYSTEMS, INC.,	)	Filed
	)	June 27, 2005
Employer,	)	
	)	
and	)	
	)	
UNKNOWN,	)	
	)	
Surety,	)	
	)	
Defendants.	)	
_____	)	

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Robert D. Barclay, who conducted a hearing in Boise on December 30, 2004. Claimant was present in person and represented by Mitchell R. Barker of Boise. Also present was Glenna M. Christensen, who had apparently been retained by Crawford Claims Management Services. Oral and documentary evidence was presented and briefs were submitted. Claimant subsequently filed a corrected and amended Reply Brief to which four new exhibits were attached. Ms. Christensen objected. There were no post-hearing depositions.

At hearing, the Referee raised questions about the identities of the actual parties to this

matter, and whether they were represented. The responses did not provide a definitive answer. The record submitted further clouded the picture and in turn raised additional questions, including whether this matter could be decided on the merits.

Crawford had been the instate third party administrator for the Cura Group, Inc. (Cura), a Florida-based professional employer organization (PEO). Crawford terminated that relationship on May 30, 2003, after encountering difficulties receiving monies from Cura for paying worker's compensation claims. Claimant maintains Cura is both a co-employer and a surety, and as such, is responsible for any additional workers' compensation benefits due him. He has styled his pleadings to show Ida-Tran Freight Systems, Inc. (Ida-Tran) as the employer in this matter, and Cura as the surety. Cura is not a surety, it is a PEO.

Claimant seeks additional temporary total disability (TTD) and permanent partial impairment (PPI) benefits, permanent partial disability (PPD) and retraining benefits, and attorney's fees under Idaho Code § 72-210 for employer's failure to carry workers' compensation insurance and under Idaho Code § 72-804 for employer's unreasonable denial of benefits. Ms. Christensen maintains the appropriate medical, TTD, and PPI benefits to which Claimant is entitled have been paid. She disputes the extent to which Claimant is entitled to PPD benefits, and argues any rating should be made after he has completed his retraining program; Claimant wanted it before. At the time of the hearing, Claimant was close to fulfilling the requirements for a two year applied technology degree at Boise State University. His tuition and books were being paid for by WIA. Under these circumstances, it is inappropriate to make a disability determination until after Claimant's retraining program is completed. The retraining issue is not ripe.

It is unclear from the record who actually paid the workers' compensation benefits Claimant

received. There was discussion some of the checks came from “New York.”

As defined by Cura, a PEO is a company which contractually assumes and manages critical human resource and personnel responsibilities and employer risks for its small to mid-sized businesses by establishing and maintaining an employer relationship with worksite employees. Professional employers doing business in Idaho are statutorily guided by Idaho Code § 44-2401 *et seq.*, the “Idaho Professional Employer Recognition Act.” Of relevance here, the Act provides each professional employer shall have a written contract with its client setting forth the responsibilities and duties of each party including the services to be rendered and the obligations of the parties. The Act further provides that each professional employer shall work with its client in securing and providing workers’ compensation coverage for all of its assigned workers. Assigned workers are defined as those with an employment relationship with both the professional employer and the client. Claimant maintains he was an assigned worker.

In general, in the relationship between a client company, a PEO, and an assigned worker, there exists a co-employment relationship in which both the client company and the PEO have an employment relationship with the worker. In that relationship the client company and the PEO contractually allocate some, and share other traditional employer responsibilities and liabilities. Here, there is no contract in the record between Ida-Tran and Cura; as a consequence, the extent of their respective responsibilities are unknown. What is known it that Cura issued paychecks to assigned workers with Ida-Tran, one of the responsibilities it was specifically tasked with under the Idaho statutory scheme.

Claimant was injured on June 14, 2002. At the time, Commission records show Ida-Tran and America’s PEO (America) as co-employers; America had acquired workers’ compensation insurance

for the assigned workers through a surety. That surety, however, withdrew coverage effective March 13, 2001, and America apparently went into bankruptcy; the exact time is unknown. Cura then purchased unknown portions of America's assets effective July 1, 2002. Cura in turn secured workers' compensation insurance from National Fire Insurance Company of Hartford. The policy actually went into effect on December 31, 2001, but it is unknown to what extent Cura agreed to assume responsibility for America's assigned workers with claims arising prior to July 1, 2002. Cura apparently did pay some claims arising prior to July 1, 2002, but later stopped. A Commission request for a copy of the purchase agreement between America and Cura went unanswered.

Ida-Tran filed for bankruptcy on March 4, 2003; the corporate entity was administratively dissolved by the Idaho Secretary of State on June 13, 2003.

According to published accounts, Cura, after allegations of fraud, became Certified HR Services Company f/k/a The Cura Group, Inc. This entity later filed for Chapter 11 bankruptcy after having its business computers in Florida seized by local law enforcement; the seizure was in response to a \$2.7 million dollar judgment.

It is not clear from the record established that Cura is a responsible party to this matter, or that they were represented at hearing. Thus, the Commission is unable to decide this matter on the merits.

DATED This 27th day of June, 2005.

INDUSTRIAL COMMISSION

/s/\_\_\_\_\_  
Thomas E. Limbaugh, Chairman

/s/  
James F. Kile, Commissioner

/s/  
R. D. Maynard, Commissioner

ATTEST:

/s/  
Assistant Commission Secretary

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 27th day of June, 2005, a true and correct copy of the foregoing **Order** was served by regular United States Mail upon each of the following:

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/s/